TRANSDIGEST

Transportation & Logistics Council, Inc.

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Register Now for Fall Seminars!

- **Wood Packaging Pest Control**
- **FMCSA Releases Proposed HOS Changes**
- **FMCSA Drug and Alcohol Clearinghouse**
- **Filing a Lawsuit Against a Carrier or Broker**
- **Auditing Carrier Invoices**
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- **ADA and Website Compliance**
- **More Q&A's**

NEW! IN A SOFT COVER EDITION!

FREIGHT CLAIMS IN PLAIN ENGLISH (4TH ED.)

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GUEST EDITORIAL

FUEL SURCHARGE – THE OFTEN-IGNORED COMPONENT OF FREIGHT COSTS

By: An Anonymous TLC Board Member

As we moved through the 2018 peak shipping season much attention turned to tight capacity and spiking freight costs. A high level of focus was dedicated to trying to determine how much freight costs will rise and how we explain those cost increases to our organizational leadership. One significant component of freight cost, that is often overlooked and easy to track, is the fuel surcharge.

Fuel surcharge, based on current data, will comprise between 17% to 22% of overall shipping costs. Data pulled from two major less than truckload carrier ("LTL") websites show fuel surcharge at 22% on 8/06/2019. Similar data pulled across major truckload carrier websites show fuel surcharge averaging $.38 per mile, week effective 8/06/2019. The average box rate for truckload shipments in the U.S., effective August 2019, is estimated at $1.82 per mile (https://www.dat.com/). With fuel surcharge at $.38 per mile that will equal an estimated 17.3% of truckload total freight cost. These percentages certainly represent a significant portion of overall freight costs.

Fuel surcharge, for domestic truckload and less than truckload shipments, is generally derived from the national average of highway diesel price that is published on the U.S. Energy Information Administration ("EIA") Website, https://www.eia.gov/petroleum/gasdiesel/. Carriers typically have a published table with diesel price ranges and an associated fuel surcharge. The rates will vary weekly and aligned with the national highway diesel price average. The EIA Website is great resource and will help the reader keep current on crude oil and diesel prices. The website also has historical data and articles that will help with forecasting. The EIA Website has an enormous amount of information when viewed in its entirety. I encourage everyone to explore the resource and identify what is valuable.

One component of the website that is particularly interesting is the weekly newsletter. This can be accessed with the link, https://www.eia.gov/petroleum/weekly/, or you can set it be distributed by emailed. The weekly newsletter will give estimates of future fuel prices and supporting data for those estimates. The EIA Website and the weekly newsletter do a good job using graphs and charts to organize large quantities of information. This is a good source to cite when forecasting fuel surcharge and explaining this component of freight costs.

There is no doubt that shippers will continue to face cost volatility related to capacity within the truckload and LTL markets. Questions about rising freight costs will continue to be asked by organizational leadership. It is more important than ever to understand what comprises total freight costs and to have the resources to explain those rising costs. The EIA Website is a valuable data driven tool that will provide information to explain a significant portion of total freight costs, fuel surcharge.

ASSOCIATION NEWS

REGISTER NOW FOR FALL SEMINARS!

The Transportation & Logistics Council is pleased to announce that it will be sponsoring three extremely informative, full-day seminars this Fall on Freight Claims, Contracting, and Transportation Law. It's your choice – take all three or choose one or two of the following seminars. They will be held at Meijer in Grand Rapids, Michigan on September 18-20; Intelligent Logistics in Austin, Texas on October 7-9; and at the Holiday Inn in Roswell, Georgia (hosted by Nolan Transportation) on October 28-30. See the attached Registration Form for more details.

FREIGHT CLAIMS IN PLAIN ENGLISH
Presented by Gerard F. Smith, Esq.

Based on the popular 4th Edition of Freight Claims in Plain English, authored by George Carl Pezold & William J. Augello, which is often referred to as the "Bible" on freight claims. This is a "soup to nuts" seminar covering a wide range of issues and topics related to freight claims and freight claim recovery, such as the basics of carrier liability for loss and damage to freight in transit, bills of lading, burdens of proof, defenses, damages, limitations of liability, time limits, liability of freight forwarders, intermediaries, warehousemen, air and ocean carriers.

This course is highly recommended for both beginners in the field of freight claims as well as experienced claims professionals. Also, seminar attendees will receive a copy of the 2-volume CD along with their registration.

Seminar Held On:

Friday, September 20th – Grand Rapids, MI
Monday, October 7th – Austin, TX
Monday, October 30th – Roswell, GA

CONTRACTING FOR TRANSPORTATION & LOGISTICS SERVICES
Presented by Raymond A. Selvaggio, Esq.

An intensive program on the practical and legal aspects of contracting for transportation and logistics services. Learn different techniques about drafting and negotiating transportation contracts, such as the "do's" and "don'ts" of contracting. Also included is a review of important legal principles, statutes, and regulations affecting the contracting process, as well as a "walk through," in-depth discussion of actual contract provisions, terms and conditions.

This course is for both purchasers and providers of transportation services with a focus on the contractual relationships among motor carriers, shippers, brokers and other 3PLs. Plus attendees will have a unique opportunity to discuss their specific contracting problems and issues with a knowledgeable transportation attorney.

Seminar Held On:

Thursday, September 19th – Grand Rapids, MI
Tuesday, October 8th – Austin, TX
Monday, October 29th – Roswell, GA

TRANSPORTATION, LOGISTICS & THE LAW
Presented by Brent Wm. Primus, JD

This one-of-a-kind seminar is intended for the persons actually doing the work to be able to identify and minimize legal and financial risks in their day-to-day responsibilities. The course is designed to provide a basic working knowledge of the laws and regulations governing the supply chain and the relationships between the players -- shippers, carriers, and intermediaries.

Registration includes a 150+ page Course Handbook. The course handbook provides vital information you need for protecting revenues for your organization AND for your own individual professional growth.

Presentation topics will include:

- Motor Carriers, Brokers, and Surface Freight Forwarders: What is the difference and why does it matter?
- Update on FSMA - the Food Safety Modernization Act
- Latest on Vicarious Liability for highway accidents
- Bills of Lading and Contracts in a Nutshell

Detailed agenda will be determined based on legal and industry developments between now and the time of the seminar.

Seminar Held On:

Wednesday, September 18th – Grand Rapids, MI
Tuesday, October 8th – Austin, TX
Tuesday, October 29th – Roswell, GA

PLAN EARLY, SAVE THE DATE FOR TLC'S 46TH ANNUAL CONFERENCE

The Transportation & Logistics Council will hold its 46th Annual Conference at the Double Tree by Hilton at SeaWorld, 10100 International Drive, Orlando, Florida on April 27-29, 2020. Pre-conference seminars will be offered on Sunday April 26, 2020. Stay tuned!

NEW MEMBERS

Regular Members

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INTERNATIONAL

WOOD PACKAGING PEST CONTROL

It has been almost a decade since we last reported on attempts to make packaging materials pest free (TRANSDIGEST 140, October 2009) with the goal of controlling the spread of invasive species. In 2006 the

Department of Agriculture's Animal and Plant Health Inspection Service ("APHIS") adopted the ISPM 15 to make sure wood pallets, crates and dunnage on imported products is heat-treated or fumigated to keep them free of foreign invaders such as the Asian longhorned beetle and emerald ash borer. They also required all such packing products to carry an IPPC treatment mark. (ISPM stands for International Phytosanitary Measure and IPPC stands for the International Plant Protection Convention).

While these efforts have genrally had a positive effect, infestations of wood-boring siricidae wasps have been found in wood packaging materials ("WPM") with legitimate stamps of treatment from Europe and other regions, with the first detected in Baltimore in June 2018 on a shipment from Greece. Additionally, CBP inspectors have been finding an increased pest presence in both properly and improperly marked WPM.

The ramifications of infested WPM can be extensive and costly. Wood-boring pests such as the emerald ash borer, Asian longhorn beetle, and wood wasp, for example, are capable of destroying billions of dollars' worth of U.S. trees and forestland, which would then cost billions more in remediation. The United States Department of Agriculture ("USDA") estimates that removal and remediation of damage by the emerald ash borer alone has cost at least $10 billion since the pest was first discovered in the U.S. in the early 2000s.

Separate from the damage that introduced pests can do to agriculture and the environment, the immediate impact on a particular shipment can be significant for carriers, importers and beneficial cargo owners. When ISPM 15 enforcement policy triggers the re-exportation of goods, importers and carriers who may have followed the regulations to the best of their abilities can face the threat of large fines on top of the direct costs.

To compound the problem, in addition to the direct costs and possible fines, there can be very significant consequential costs when re-exportation is required. This situation would typically arise when there is a delay in the delivery of a time-sensitive piece of equipment or materials required for a project.

While the CBP tries to use a common-sense case-by-case approach with its inspections and handling of WPM and related shipments, such as segregating infested pallets from the rest of a shipment, crating of items like large pieces of machinery create a much greater problem. The direct and indirect costs of having to return a multi-million dollar piece of equipment to its origin are significant.

There is a real point of contention regarding these costs, and that is that under the current law, they are borne by the importer and beneficial cargo owners. Consequential costs are borne by the beneficial cargo owner and the importer bears the cost of re-exportation. There is a strong argument that it should be the exporter, who has control over the selection and use of WPM, who should bear these costs.

It is not clear why there has been a recent increase in infested WPM, particularly from Europe and even in WPM that has been certified as compliant. One possible cause being considered is that Europe does not allow methyl bromide for fumigation. WPM is often reused, repaired or remanufactured, leading to the possibility for material that has been properly treated to become infested or reinfested after treatment.

Whatever the cause, solutions need to be found both for the infestation problem and for the allocation of costs.

Visit https://www.cbp.gov/border-security/protecting-agriculture/wpm for general CBP information on wood packaging materials.

Visit https://www.cbp.gov/sites/default/files/assets/documents/2018-Oct/20180725_GUIDELINES%20FOR%20LIQUIDATED%20DAMAGES%20AND%20PENALTIES%20FOR%20NC%20WPM.pdf for the July 2018 "Guidelines for Liquidated Damages and Penalties for Non-Compliant Wood Packaging Material".

Visit https://www.cbp.gov/newsroom/local-media-release/baltimore-cbp-reports-nation-s-first-encounter-wood-boring-wasp-species# for report of first encounter in U.S. with wood boring wasp.

Visit https://www.cbp.gov/sites/default/files/assets/documents/2018-Oct/Web%20Vers%20%20October%202018%20WPM_TradeOutreach%20%28003%29.pdf for the CBP's "Wood Packaging Material Trade Outreach", a rather comprehensive guide to invasive pests, the impacts, compliance and costs of non-compliance.

MOTOR

FMCSA PUBLISHES PROPOSED HOS CHANGES

On August 22, 2019 the Federal Motor Carrier Safety Administration ("FMCSA") published a Notice of Proposed Rulemaking ("NPRM") in the Federal Register on changes to hours of service ("HOS") rules. The proposed rules would increase flexibility on a number of issues that often now cause drivers to push the safety limits when stopping might be a better option.

According to the FMCSA press release, the "FMCSA wants drivers and all CMV stakeholders to share their thoughts and opinions on the proposed changes" to the HOS rules in the NPRM, and the FMCSA Administrator, Raymond P. Martinez "encourage[s] everyone to review and comment on this proposal."

The NRPM offers five key revisions to the existing HOS rules:

- The Agency proposes to increase safety and flexibility for the 30 minute break rule by tying the break requirement to eight hours of driving time without an interruption for at least 30 minutes, and allowing the break to be satisfied by a driver using on duty, not driving status, rather than off duty.
- The Agency proposes to modify the sleeper-berth exception to allow drivers to split their required 10 hours off duty into two periods: one period of at least seven consecutive hours in the sleeper berth and the other period of not less than two consecutive hours, either off duty or in the sleeper berth. Neither period would count against the driver's 14-hour driving window.
- The Agency proposes to allow one off-duty break of at least 30 minutes, but not more than three hours, that would pause a truck driver's 14-hour driving window, provided the driver takes 10 consecutive hours off-duty at the end of the work shift.
- The Agency proposes to modify the adverse driving conditions exception by extending by two hours the maximum window during which driving is permitted.
- The Agency proposes a change to the short-haul exception available to certain commercial drivers by lengthening the drivers' maximum on duty period from 12 to 14 hours and extending the distance limit within which the driver may operate from 100 air miles to 150 air miles.

FMCSA's proposal is crafted to improve safety on the Nation's roadways. The proposed rule would not increase driving time and would continue to prevent CMV operators from driving for more than eight consecutive hours without at least a 30-minute change in duty status.

Visit https://www.fmcsa.dot.gov/newsroom/federal-motor-carrier-safety-administration-publishes-hours-service-proposal-improve-safety to view the press release.

Visit https://www.federalregister.gov/documents/2019/08/22/2019-17810/hours-of-service-of-drivers to view the NPRM published in the Federal Register and to submit comments. The comment period will end October 7, 2019.

TRUCK CRASHES PER MILLION MILES

The Central Analysis Bureau ("CAB") published an updated "Crashes Per Million Miles Traveled Data" which includes 12 months of crash data compared to the mileage provided. According to the CAB website:

> Specifically, data includes all carriers with at least one power unit that were active during the last 12 months. Mileage comes from the most up-to-date source we have available, including MCS-150 and MCS-151 from our census data, and sometimes the SMS website. Crashes are federally reportable crashes that involved these Motor Carriers that occurred in the twelve month period ending on the date of the most recent crash in the CAB system (7/7/19). *Note that if a crash included multiple CMVs it will be counted multiple times.

Crashes						
	Crashes		Injury Crashes		Fatal Crashes	
Pwr Units	Total	per mil. miles	Total	per mil. miles	Total	per mil. miles
1	13944	0.14	4864	0.048	386	0.0038
2-5	20453	0.26	7121	0.090	576	0.0073
6-15	19333	0.40	6940	0.144	522	0.0109
16-50	21851	0.54	7564	0.188	574	0.0143
51-500	31156	0.45	10964	0.157	802	0.0115
501+	30225	0.49	10336	0.168	703	0.0114
All	136962	0.34	47789	0.119	3563	0.0089

http://www.cabfinancial.com/articles/category/bits-pieces/

FMCSA'S DRUG AND ALCOHOL CLEARINGHOUSE

The Federal Motor Carrier Safety Administration ("FMCSA") will soon have its online "Drug and Alcohol Clearinghouse" available. According to the FMCSA the Clearinghouse is a secure online database that will give employers, the FMCSA, State Driver Licensing Agencies ("SDLAs"), and State law enforcement personnel real-time information about commercial driver's license ("CDL") and commercial learner's permit ("CLP") holders' drug and alcohol program violations.

The goal is to improve highway safety by helping employers, FMCSA, SDLAs, and State law enforcement to quickly and efficiently identify drivers who are not legally permitted to operate commercial motor vehicles ("CMVs") due to drug and alcohol program violations. The secure online database will provide access to real-time information, ensuring that drivers committing these violations complete the necessary steps before getting back behind the wheel, or performing any other safety-sensitive function.

When a driver completes the return-to-duty ("RTD") process and follow-up testing plan, this information will also be recorded in the Clearinghouse. The FMCSA's CDL Drug & Alcohol Clearinghouse Registration begins this fall. The Clearinghouse is slated to become operational January 6, 2020.

Visit https://clearinghouse.fmcsa.dot.gov/ and https://clearinghouse.fmcsa.dot.gov/FAQ for more information.

ANOTHER CARRIER SHUTS DOWN

By company notice, LME Inc. ceased operations on July 12, 2019. Prior to the closure, the company operated more than 30 terminals in 10 states and had more than 600 employees, including 382 trucks and more than 485 drivers, according to the Federal Motor Carrier Safety Administration's SAFER site.

There were no warnings prior to the shutdown and no reason was provided by the management. Other large motor carriers to cease operations in 2019 were: NEMF; Falcon; Williams Trucking of Dothan, Alabama; and ALA Trucking Inc.

FILING A LAWSUIT AGAINST A MOTOR CARRIER OR BROKER

By George Carl Pezold

We often get questions about how to bring a lawsuit against a motor carrier or broker that is located in another state. The Federal Motor Carrier Safety Administration maintains a website with a "Licensing & Insurance" section: http://li-public.fmcsa.dot.gov/LIVIEW/pkg_html.prc_limain

Since all motor carriers and brokers are required to file a BOC-3 form and designate process agents in each of the states upon whom service of a complaint can be made, you can commence a suit where you are located and effectuate service on the defendant by serving the agent. If you are an individual or a small business you may be able to do this in small claims court without an attorney.

If you go to the above website, click on the drop-down box called "Choose Menu Option", then select "Carrier Search" and enter the USDOT number or MC number (or the name and state) for the company (you may need to select the company from a list). When you find the company, look for the box that says "View Details" and select "Report". The report will show the name of the company's "Blanket Company". Go back to the previous menu to "Choose Menu Option" and select "Blanket Companies". You will see a list of all the blanket companies. Select the one for the company and find the agent for process in your state to serve.

We also get questions from carriers about collecting unpaid freight charges from a broker.

All brokers are required by federal regulations (49 CFR §387.307) to obtain and file evidence of either a surety bond or trust fund in the amount of $75,000. You can also use the above link to find out information about the bond or trust fund on the FMCSA Licensing and Insurance website.

Click on the drop-down box called "Choose Menu Option", then select "Carrier Search" and enter the USDOT number or MC number (or the name and state) for the broker.

You should be able to file a claim (in writing) for your unpaid freight charges directly with the bonding or trust fund company listed on the page with the broker's information. Your claim should be properly supported with relevant documents such as a rate confirmation, bill of lading, proof of delivery, invoice for freight and accessorial charges, etc.

It should be noted that if there are a lot of claims against the bond or trust fund it may be depleted, so it is wise to file promptly if it appears that the broker is having financial problems or may be going out of business.

NEGOTIATE RULES AND AUDIT YOUR CARRIER INVOICE ADJUSTMENTS

By Paul Benfer, Managing Partner, Kinetic Supply-Chain Services

In the past year I reviewed thirteen hundred and seventy-six (1,376) carrier adjusted invoices for one client. Close to thirty (30) percent of those adjustments were rescinded or reduced by the less-than-truckload

("LTL") carriers. How did I get the LTL carriers to reduce or remove the adjustments? The simple answer was to ask for evidence to verify the adjustments and demand that the carriers adhere to the contract provisions negotiated.

Below are some steps you can take to help mitigate the pain of aggressive LTL carrier behavior.

- If you have a significant LTL freight spend, demand a contract. The cost of a contract crafted by a seasoned transportation attorney or third-party consultant is negligible compared to the potential additional costs of overly aggressive LTL operations personnel. Make sure to develop a rules tariff and exempt your company from the carrier's rules tariff. Place verbiage in the contract to require the carrier to contact your staff before an accessorial is provided that isn't requested on the bill of lading. Examples of common accessorial fees are lift-gate delivery, inside delivery, notification prior to delivery and sort and segregation. You wouldn't let a contractor add costs to a job for repair or construction work on your home without consent. Why would you allow a carrier to arbitrarily add fees to your freight bill without prior approval?

- If you don't move significant amounts of LTL freight, carriers will be less inclined to agree to a contract. In that case, know your freight and your customer base. If your deliveries are to strip malls or stand-alone shops in downtown areas, negotiate riders that protect your company from lift-gate delivery and limited access fees. The trend is to charge for all deliveries to stores and businesses without docks, along with limited access fees. Protect yourself through specific rule change requests to the carrier tariff page agreement. Make the carriers specifically address the fees and how they will be applied before you move forward. Have all provisions that deviate from the carrier rules tariff put down in writing.

- List the pallet dimensions on the bill of lading. This simple step will help reduce or eliminate invoice adjustments where the commodity shipped is subject to density classification.

- Document your freight via weight certificates and photography. If you can document the weight and dimensions of your shipments, it becomes easier to defeat adjustments. The money spent on a digital scale will pay for itself very quickly. You can use a camera on your phone to take pictures of the freight on the scale.

- Ask for evidence. A few LTL carriers do not operate with the latest technology. Instead, they rely on their dock workers and drivers to inspect the freight. Many LTL carriers incentivize their personnel to inspect and find shipment discrepancies. It is only human nature to take a short cut on occasion if there is a reward tied to it. A one-inch variance in pallet dimensions can mean the difference in a class change. As an example, a 500 lbs. shipment from Newark NJ to Chicago IL costs $289.69 at class 175 (4 lbs. to 6 lbs. PCF) and $579.38 at class 250 (2 lbs. to 4 lbs. PCF) with an 88.7% discount via a major regional carrier. That is a one hundred percent increase in cost! If the carrier cannot provide photographic evidence for an adjustment like the one above, demand that they rescind the adjustment. If they still do not relent, recreate the shipment and have their representative come in and measure the pallet. If possible, make sure that all correspondence is compiled on one email thread in case of collection calls, small claims or litigation.

- Ship orders as cartons and not pallets. If a driver can count the pieces on a pallet, then craft the bill of lading with a carton count. In many cases LTL carriers will inspect a shipment if it is palletized as a single unit. They will not take the time to measure every carton. If they fail to inspect the shipment as presented via the contract of carriage, the bill of lading, the inspection is invalid.

- Know the weight breaks for your freight and demand that the LTL carrier(s) use the billed weight versus the actual weight. I discussed this position with two transportation attorneys. Both thought my argument was strong. If you have a shipment that weighs 440 lbs. but the freight charges are calculated with a deficit weight (60 lbs.) at 500 lbs. and the class is determined by cube, the carrier should use the actual billed weight to determine the freight class. If the above's pallet cube was 112 cubic feet (4'x4'x7') the density based on actual weight is 3.93 PCF versus 4.16 PCF for billed weight. The LTL carrier benefits from

60 lbs. of extra cubic capacity that can be used for another shipment and the additional revenue generated by using the actual weight to change the class and increase your freight charges. I would suggest you add the above to your contract or rules tariff agreement.

- An LTL carrier will continue to focus on any account that does not provide accurate weight or properly describe their commodity. They will continue to focus on any account where there is money to be made. If you properly weigh and describe your shipments, the carriers will tend towards other shippers, as there is little or no reward for an audit of your account's freight.

LTL carrier invoice adjustments can wreak havoc on your freight budget. The best defense is attention to shipment detail and knowledge of customer delivery requirements. When carriers see an opportunity to upwardly adjust fifteen (15) percent of tendered shipments or more, it is obvious that they will not soon relent in their pursuit of a larger share of your transportation dollars.

Good luck!

PARCEL EXPRESS

AN EARLY HOLIDAY PRESENT FROM UPS? YES AND NO!

by Tony Nuzio, ICC Logistics Services, Inc.

Hot off the press, United Parcel Service ("UPS") announced on August 16, 2019 that they will **NOT** apply any additional surcharges for ***US Residential deliveries*** during the upcoming 2019 peak holiday shipping season. The only exceptions would be where surcharges are covered by specific contract provisions or for deliveries requiring special handling. As usual, UPS is expected to handle a record number of peak holiday season packages.

David Abney, UPS' Chairman and CEO stated "we are continuing to build momentum as our transformation matures and we enhance the company's operating efficiency. This announcement enables UPS customers to plan now for a great holiday shopping season and to satisfy their customers by utilizing UPS' industry leading on-time delivery service, once again this year."

Over the past two years, UPS has added several additional 747 and 767 aircraft to their fleet, along with more than 700,000 additional packages per hour of automated sortation capacity in new Super Hubs, as well as updated processing and delivery facilities.

Not to be missed in today's announcement is the fact that UPS **WILL** apply additional Peak Season Surcharges to what it refers to as "modifications" to several Peak Surcharges for **Over Maximum**, **Large Package** or **Additional Special Handling** items requiring manual processes or off-line handling.

Starting on November 24, 2019 and continuing until January 4, 2020, packages with "unusual dimensions" requiring special handling will receive an Additional Handling Surcharge.

Starting October 1, 2019 and continuing until January 4, 2020, packages designated as "Large" under UPS' Tariff or packages above UPS' small package network size and weight limits will receive an additional surcharge.

Here are the additional Peak Season Surcharges shippers may be subject to:

Additional Handling Surcharge – $3.60 per Package

Large Package Surcharge – $31.45 per Package

Over Maximum Limits Surcharge – $250.00 per package

All UPS parcel shippers should make sure they properly budget for these additional Peak Season Surcharges as well as make sure they are completely familiar with all of the Terms and Conditions of all UPS Service Guides and/or Tariffs. It's the best way to avoid costly and unexpected surprises.

QUESTIONS & ANSWERS

By George Carl Pezold

FREIGHT CHARGES – LATE CHARGES FOR FAILURE TO DELIVER TIMELY

Question: We are a brokerage company. We contracted with a carrier to pick up a shipment and deliver to receiver with ample transit time. The carrier is very late and knew when the load and rate agreement was signed that late charges would incur upon failure to deliver timely. The carrier is now telling us they will not deliver the freight until they are paid.

We were having such a hard time getting this carrier to stay in touch with us. The carrier basically said he would not deliver the freight until he was paid. We had a rate confirmation stating that late charges would incur if the driver was late on delivery, due to installers being on site to offload the trailer. Our customer pays installers and if they are standing round waiting for the truck then the customer charges us!! This is the reason for the late charges.

We corresponded with the carrier and let them know we would drop the late charges, if they would just get there today and deliver. So far they are not there and we have no idea where the truck is or where the freight is? What is our recourse?

If we pay the carrier and they still do not deliver the freight, how should we deal with it?

Answer: First of all, a carrier does have a "lien" for its freight charges and can hold a shipment until it is paid.

As to the "late charges" a carrier may or may not be liable depending on the facts. These can fall into the category of "special damages" for which it is necessary to provide notice (on the bill of lading or a separate document) at the time of shipment that there would be damages (late charges) if the delivery is not made by the specified date and time, and the nature and/or amount of the damages.

The carrier has a duty under the bill of lading to deliver the goods, and failure to do so is a "non-delivery" for which it is liable. As a broker, you can file a loss and damage claim (on behalf of your shipper) against the carrier, and the claim would be for the full invoice price of the goods, and, depending on the specifics of the agreement, late charges.

Unfortunately, in order to get the freight delivered you may have to pay the carrier the agreed freight charges, and deal with the late charges later.

CARRIERS – ON HAND NOTICE FOR REJECTED LOAD

Question: Our company got hired by a broker to transport a truckload of mixed produce. There were 3 deliveries that our company was hired to do. At the first delivery, the client received the pallets under protest due to them not meeting quality standards when they carefully inspected and opened the boxes of broccoli. Our reefer had not malfunctioned and the temperature of the product was at required temperature as indicated on the bill of lading.

At the second delivery, after unloading 2 or 3 boxes and opening them, the receiver requested an U.S. Department of Agriculture ("USDA") inspector to come and perform an inspection of the load before we unloaded the pallets. After the inspection was conducted, the USDA inspector declared that the product did not meet the quality that USDA required. So, the receiver decided to not accept the product.

The broker instructed us to take all the product to the third delivery where they would unload all of the broccoli and some pallets of carrots that we were also hauling. Next day when we reached the last stop, the receiver there unloaded the pallets of carrots and rejected all the pallets of broccoli due to not meeting USDA quality standards.

We got in contact with the broker and requested instructions where to take the pallets of rejected produce. We did not receive any instructions until 36 hours later to take pallets to a food bank warehouse about 200 miles from the last drop. The driver showed up at requested new delivery to try and finally get unloaded, but again the people at that warehouse rejected the produce.

It's been 24 hours since that last attempt to get unloaded and now all the response we get from the broker is we are waiting on our client to tell us what to do with the product.

What are my options? They are using my reefer unit as storage and I need my truck empty ASAP. How much longer do I have to wait? It seems like the seller has abandoned the product.

Answer: In order to protect your interests, you should immediately notify the BROKER, THE SHIPPER, AND THE CONSIGNEE named on the bill of lading, IN WRITING, that the shipment was undeliverable and request instructions as to what they want you to do.

Since you are legally responsible for loss or damage to the shipment, I would also suggest that your "on hand notice" should say that if instructions are not received within 24 hours you will place the shipment in suitable public storage or dispose of them, and that they will be responsible for any storage charges or disposal costs.

HAZMAT – SHIPPER/OFFEROR AND INCIDENT REPORTING REQUIREMENTS

Question: My question involves U.S. Department of Transportation ("DOT") Hazardous Materials Incident reports pursuant to form DOT F5800.1. In particular, who should be listed as "Shipper/Offeror"? If a shipment is FOB origin and freight collect and the customer selects the carrier for delivery and there is a hazmat incident who should be listed as the Shipper/Offeror?

Today, my company still provides a company bill of lading ("BOL") that lists the seller (company) as the shipper (due to system limitation), but per the FOB origin terms the product is "owned" by the customer and transported by customer's carrier. Wouldn't the carrier or customer also create their own BOL naming the customer as the shipper as well?

Answer: [I referred your question to Steve Hunt at ShipMate, my HazMat "guru" for an answer – see below. Hope this answers your question.]

My understanding of the question is that the company is asking who should be reported as the Shipper/Offeror on the DOT F5800.1.

Regarding incident reporting, DOT requires that a telephonic report be made within 12 hours as required by 49 CFR 171.15 (for qualifying incidents), and a written report be completed within 30 days of the incident per 49 CFR 171.16.

If the shipper (or name of shipper listed on the BOL or shipping paper) has NOT made a verbal report to the National Response Center (+1 (800) 424-8802), they are strongly advised to do so immediately. I may also be reached to provide any technical assistance that may be necessary. A report online also constitutes

reporting per 49 CFR 171.16. The URL is: https://www.phmsa.dot.gov/hazmat-program-management-data-and-statistics/data-operations/incident-reporting.

With regard to the written report, DOT F5800.1, the instructions (herein attached) require that the Carrier/Reporter (10) provide the following information:

- Name, street address, Federal DOT number (if applicable), and hazmat registration number of the carrier or the entity who is reporting the incident (if other than a carrier). The entity in physical possession of the material when the incident occurred or was discovered must report the incident.

In addition, the Shipper/Offeror must provide the following information:

- Enter the information about the person or entity that originally offered for transportation the material or package involved in the incident.

Typically, this is the name of the entity which is shown on the dangerous goods declaration (Bill of Lading). However, since they (company) are technically offering into transportation on their Bill of Lading (e.g., they've signed the dangerous goods declaration ("DGD") on behalf of the seller (customer), they (company) should prepare and provide their information. They may indicate XYZ, on behalf of (o/b/o) ABC, since, technically, the customer is listed as the shipper but the company is technically the offeror.

It could get a little messy if the cause of the accident was faulty packaging, for example, as opposed to a vehicular accident that resulted in the release. In any case, the first step is to make the verbal report (telephonically), followed by the DOT F5800.1. They may also contact the local office for that particular mode, but should be prepared to provide copies of the following information in preparation of the accident investigation which will surely occur:

Shipping papers
Bills of Lading
Packing Lists
Safety Data Sheets
Certificate of Analysis
Training Records (for shipper, packer, loader, hauler, handler, etc.)
Copies of Training Certificates and Course Syllabi/Manuals
Contract w/Customer
Purchase Orders
Certificates of Origin
Technical Data Sheets

If you need other assistance, please call me right away at +1 (310) 600-5241 direct.

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FREIGHT CLAIMS – COVERAGE AS "ADDITIONAL INSURED"

Question: My client has a claim against a carrier we brokered their freight to. We have been assisting. The claim is legit. They won't pay it, saying there is insufficient packaging. It was a cross-border shipment from the US into Canada.

The packaging is engineered crating, custom-built for the product and is a single-use crate. This manufacturer ships thousands of these units annually; last year they had two cargo claims, caused by forklift damage to the crate.

The damage in this case (allegedly their only claim this year to date) appears to have been caused by a smaller crate of parts being dropped on top of the crate below while being cross-docked, crushing the top of the crate and the cargo inside (we have seen photos). The cargo normally rides fine being stacked in this manner. This same carrier has handled shipments from the manufacturer through us and other brokers without incident.

The carrier will not turn this over to their insurance company. There is no adjuster looking at the damage or the crate, though I have provided photos.

I have contacted both the insurance company and the agent (we are a certificate holder and shown as an additional insured), but they state unless the insured reports the claim, they can't start a claim file.

The policy states:

"The Certificate Holder is hereby added as an Additional Insured but only with respect to liability arising out of the operations of the Named Insured." Sounds like we should be insured to me. But if the carrier refuses to admit liability and refuses to get his insurance company involved (with an adjuster, inspector, etc.), how can that be construed as coverage? For the record, we have been sending copies of all shipper's claim correspondence to the insurance company just in case.

What recourse does the shipper have, short of filing suit?

Answer: There is nothing that you can do to make the carrier file a claim with its cargo insurer. However, if you are in fact an "additional insured" under its cargo policy and not merely a "certificate holder", I would think you can file a claim directly with the insurer.

However, without seeing the certificate or the policy I suspect that the insurer may take the position that "additional insured" only relates to the automobile BI/PD coverage and not to the cargo coverage. But, it would be worth pointing out the "additional insured" on the certificate to them.

Otherwise, if that does not work, as you suggest, the shipper's remedy would be to file a lawsuit against the carrier for the loss and damage.

FREIGHT CLAIMS – FINDING PROCESS AGENTS IN ORDER TO BRING SUIT

Question: We are a freight broker and my question involves a carrier that has refused to file a "damaged" freight claim with their insurance company. The consignee took pictures of the freight once it arrived for unloading and notated on the delivering bill of lading ("BOL"), "Damaged". I have tried to reach out to the carrier's owner, the carrier's insurance agent as well as the carrier's insurer. I have been denied by all 3 for accepting the claim which in my mind has been substantiated with pictures and BOL signed at time of delivery.

My question is do I have any recourse in getting the carrier to accept being responsible for this claim?

Thank you for your time and I would appreciate any help you can offer.

Answer: Unfortunately (unlike the old Interstate Commerce Commission) the Federal Motor Carrier Safety Administration ("FMCSA") does not offer any assistance in matters such as loss or damage claims. Your only remedy is to bring a lawsuit against the carrier. Since you are a broker, you would need to get an assignment of the claim from the owner (shipper or consignee) of the goods. You may be able to bring a suit in your local small claims court, but procedures are different in every state so you would have to check this out.

I would note that carriers are required to designate an agent for service of process with the FMCSA (the BOC-3 form) so you can get jurisdiction by serving the summons and complaint on the agent in your state.

You can find out who the agent is through the FMCSA website at https://li-public.fmcsa.dot.gov/LIVIEW/pkg_html.prc_limain.

FREIGHT CHARGES – LOCATING BROKER SURETY BOND

Question: We delivered a load (steel plates) to the consignee and the bill of lading was signed that it was received without any issues. More than a month later we received a letter from the broker that the load was damaged and they claim some certain amount. We state that we delivered the product without any damage. Now the broker refuses to pay as for the service we provided and demands the difference for the damage. What can be done in this case?

Answer: I would suggest that you file a claim against the broker's surety bond or trust fund. You can find out information about the bond or trust fund on the FMCSA website:

http://li-public.fmcsa.dot.gov/LIVIEW/pkg_html.prc_limain

Click on the drop-down box called "Choose Menu Option", then select "Carrier Search" and enter the USDOT number or MC number (or the name and state) for the broker. You should be able to file a claim for your unpaid freight charges directly with the bonding or trust fund company listed on the page with the broker's information.

If that does not work, most likely your only remedy is to file a lawsuit to collect your freight charges from the broker that owes you the money. You may be able to do this in your local small claims court, but you will need to check with them since procedures are different in each state. Note that if you do bring suit against the broker, they may file a counterclaim for the alleged damage to the steel, but they would have a difficult burden of proof.

FREIGHT CLAIMS – CARRIER OBLIGATIONS AFTER ACCIDENT

Question: We brokered a shipment, unfortunately with a broker for 1 of 3 loads moving from MA to IL. They contracted a carrier for the load. We got a call this morning stating the truck was involved in an accident and would not be delivering today as planned.

We asked for immediate information as to where the truck was and if we could get pictures that the product was not damaged. Fell on deaf ears.

It is now 5:15pm on Monday, we were able to speak with the driver and she told us that the accident happened on Sunday in Fort Wayne, IN, which is where she said the trailer is now.

The broker is not providing us anything other than that the carrier is not cooperating.

We spoke with a dispatcher there who could only tell us minimal as it is in the hands of safety.

What is a carrier's legal obligation for checking the condition of the freight and insuring it is in a safe secure area. By the look of this picture the trailer was dropped in a graveyard and it does not appear that the lock is still on the trailer.

I am still miffed as to why they did not take a picture of the freight when this was taken.

That sums up the scenario and just looking for advice and or intervention with the carrier or other broker to get the shipment delivered if there is no damage.

Answer: I don't know what kind of contract you have with the owner of the goods (shipper/consignee), but you most likely will be "caught in the middle" if there is a claim for loss, damage or non-delivery.

Obviously, the carrier that was in possession of the goods at the time of the accident will be responsible for any loss or damage, and also has a duty to protect the goods until they are delivered or there is a proper disposition, salvage, etc. In order to get action to resolve the problem, I would suggest that you promptly file a claim in writing on behalf of the owner with the responsible carrier, with copy to the broker, for the full invoice value of the goods.

FREIGHT CLAIMS – FORWARDER LIABILITY ON INTERNATIONAL SHIPMENT

Question: Our company operates strictly as a broker in the US and we are sensitive to the issue of behaving in any way like a carrier...or forwarder.

On the other hand we handle freight into Mexico with a forwarder's authority, and have our first serious cargo claim on a series of machinery moves from the US into Mexico (the damage occurred in Mexico).

I'm going on the premise that because we are a forwarder in this case that we need to take an assertive approach and we are sending our company personnel to Mexico to take part in the inspection.... whereas as a broker we would likely would not do so.

Can you confirm for me that I am making the right assumption regarding our liability being as a forwarder in this?

Answer: I assume that your company, acting as a forwarder, issued your own bill of lading to the shipper and unless you have a liability limitation in your tariff or a transportation contract, will probably have full liability to the shipper for any loss or damage.

Even though the carrier is liable to your company for loss or damage to the goods while in its possession, if it is a U.S. carrier on a through bill of lading it probably has little or no liability for a loss in Mexico (check its tariff), and if it is a Mexican carrier (from the border) its liability is very limited under the "talon" (bill of lading) and Mexican law. (See *Freight Claims in Plain English*, Section 20.) In other words, you will have difficulty in recovering from the responsible carrier.

I would certainly advise you to take part in the inspection, since the shipper will most likely file a claim against your company.

FREIGHT CHARGES – DEMURRAGE LIABILITY UNDER INCOTERMS DDP

Question: We have a client who imported 5 x 40ft containers from China to the UK under terms DDP*. The client was unable to take delivery of the containers immediately after customs clearance and demurrage charges were incurred at the port.

We asked the client (importer) if they were willing to pay the demurrage charges as we pointed out that it was not the supplier/shipper's fault that the importer could not take the goods from the port during the free time.

Our client refused to pay under the terms DDP. We then approached the shipper in China to pay the demurrage, and they have also now refused to pay these costs as they feel it wasn't their responsibility, but the importer's.

My understanding is that under the term DDP, the shipper is responsible for all importation costs including demurrage whether it was their fault or not and they are legally obliged to pay. Is my understanding correct?

Answer: Since the shipment moved under Incoterms DDP, and the demurrage charges were incurred after delivery under the contract, I would think that the buyer would be responsible for these charges.

TECHNOLOGY

ADA AND WEBSITE ACCESS

This is a situation not specifically related to transportation matters, but one that all businesses with an online presence should be aware of and pay attention to. It involves a case wherein Domino's Pizza has been sued, and lost, for failure to comply with the Americans with Disabilities Act ("ADA").

Specifically, the Domino's suit involves the question of whether Title III of the ADA requires a website or mobile phone application ("app") that offers goods or services to the public to satisfy discrete accessibility requirements with respect to individuals with disabilities. Domino's has petitioned the U.S. Supreme Court to take the case after losing at the Ninth Circuit.

The broad significance of this case is a result of the following two facts: Due to the borderless nature of the internet, the Ninth Circuit ruling is nationwide and affects anyone with an internet presence that can be accessed in the Ninth Circuit (Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Northern Mariana Islands, Oregon and Washington); and that the Ninth Circuit ruling requires that any business with a physical place of business, a brick-and-mortar shop, must then make its website fully ADA compliant. Therein lies the problem, nobody knows what that means.

According to Domino's petition, the Ninth Circuit decision:

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* **DDP - Delivered Duty Paid -** means that the seller fulfils his obligation to deliver when the goods have been made available at the named place in the country of importation. The seller has to bear the risks and costs, including duties, taxes and other charges of delivering the goods thereto, cleared for importation.

> [h]as rendered the ADA applicable to websites and apps that offer access to companies' in-store goods and services. Those websites and apps must provide full accessibility, even if other means of accessing the same goods and services are readily available. No company or non-profit can design its website for the Ninth Circuit alone—so the ruling . . . effectively sets a nationwide mandate.

Domino's points out that the Supreme Court must step in and provide guidance because no one knows just what a fully ADA compliant website or app is, and there is a significant discrepancy regarding applicability of the ADA to the Internet between the various Circuit courts.

Another problem Domino's points out is that over the years, the Department of Justice ("DOJ") has taken shifting positions on the matter, starting in 1996 with the statement "that websites do not run afoul of Title III if there are alternative means of access to the information provided by a given website." In 2010 the DOJ issued an advance notice of proposed rulemaking regarding this matter, but withdrew it in 2017 after years of waffling and failing to ever coherently explain how Title III could or should extend to websites.

It should be noted that the plaintiff in the Domino's case, a blind person, declined to make use of any of the available alternative means to order his pizza, such as making a phone call.

Readers who might ask "So what, how does this affect me?" should understand that this suit against Domino's is only one of thousands that have been filed around the country on this issue, and the numbers are growing. In their petition, Domino's points out that in 2018, plaintiffs filed "several thousand suits involv[ing] web accessibility – nearly triple the number from 2017, and almost ten times the amount filed in 2016." They also pointed out that "20% of the web accessibility lawsuits plaintiffs filed last year—or approximately 450 suits—targeted companies that had been sued before."

The suits are not just prolific, they are costly and most defendants end up settling, and no one with an online presence is safe. Plaintiffs have pursued restaurants, retailers, grocery stores, car dealerships, hotels, banks, exercise studios, along with non-profits that provide free online resources to the public, including universities, schools, libraries, museums, and art galleries. Their suits claim that these defendants' websites were inadequately accessible to individuals with disabilities, and that this alone triggers ADA liability.

In more extreme examples, plaintiffs have gone after New York's art galleries in alphabetical order, claiming that their websites inadequately describe the artwork and other products available at those places of public accommodation. Plaintiffs have even sued Beyoncé, alleging that her website is a public accommodation that is insufficiently accessible to visually impaired users.

Domino's also points out in its petition that due to the expense and uncertainty, many defendants lacking the resources to overhaul their websites and mobile apps, choose to eliminate online offerings instead, a choice that hurts all consumers, including people with disabilities. They provided the example of what the University of California, Berkeley did in 2016 when it was informed by the DOJ that:

> its online educational content violated the ADA because it lacked adequate text descriptions, had poor color contrast, improper formatting, and lacked closed captions. Citing the "extremely expensive measures" DOJ mandated for ADA compliance, Berkeley opted to instead remove public access to over 20,000 free online video and audio lectures.

The process of rendering every aspect of a website accessible to a visually or hearing impaired person is costly and time-consuming, Domino's contends, and there's no sense of what compliance with the ADA—if it's required—would really look like.

When the ADA was passed in 1990, during "the age of landlines and snail mail," it was designed "to ensure that individuals with disabilities obtain equal access to goods and services available at a wide range of physical places open to the public, which the statute terms "places of public accommodation."" It did not

contemplate online spaces. The technology has changed, but the language of the law has not. While it is important to provide accessibility to as many people as possible, in the physical world as well as online, there needs to be a balance.

In its petition, Domino's acknowledges that the Supreme Court has seemed disinclined to distinguish life online from the physical world because the two modes are so deeply intertwined by now. If the Justices ask Domino's to explain how the ADA's definition of public accommodations could possibly exclude the internet at this point, Domino's provides an answer in its petition—it's not up to the courts.

Domino's argues that if representatives want to include the internet in the ADA's definition of public accommodations, they're free to do so. But the courts can't decide what representatives meant retrospectively, especially when it imposes such a burden on companies. The petition concludes, "Congress … passed a statute to apply only to places of public accommodation, which must be physical locations, and only to ensure adequate overall access to the benefits of those places. Any different policy choice is up to Congress, not the judiciary."

Domino's petition is available online at https://www.supremecourt.gov/DocketPDF/18/18-1539/102950/20190613153319483_DominosPetition.pdf.

CCPAC NEWS

CCPAC

Established in 1981, CCPAC is a nonprofit organization comprised of transportation professionals with manufacturers, shippers, freight forwarders, brokers, logistics, insurance, law firms and transportation carriers including air, ocean, truck and rail. CCPAC seeks to raise the professional standards of individuals who specialize in the administration and negotiation of cargo claims. Specifically, CCPAC gives recognition to those who have acquired the necessary degree of experience, education, expertise and have successfully passed the CCP Certification Exam covering domestic and international cargo liability to warrant acknowledgment of their professional stature.

The next CCP Exam will be given Saturday morning, November 2, 2019, in most major cities nationwide in the USA and Canada. Exact locations will be determined based on applications submitted. Prior application, registration and approval are required to sit for the exam. On-line registration for the November exam is now open on the website www.ccpac.com.

The 2020 CCP Exam Primer Class will be April 26, 2020, in Orlando, FL. The CCP Exam will also be given in Orlando on Wednesday, April 29, 2020.

For more information about CCPAC visit www.ccpac.com for general information and membership in CCPAC.

CLASSIFICATION

FUTURE COMMODITY CLASSIFICATION STANDARDS BOARD ("CCSB") DOCKETS

	Docket 2019-3	Docket 2020-1
Docket Closing Date	August 22, 2019	November 27, 2019
Docket Issue Date	September 19, 2019	January 9, 2020
Deadline for Written Submissions and to Become a Party of Record	October 10, 2019	January 31, 2020
CCSB Meeting Date	October 22, 2019	February 11, 2020

Dates are as currently scheduled and subject to change. For up-to-date information, go to http://www.nmfta.org.

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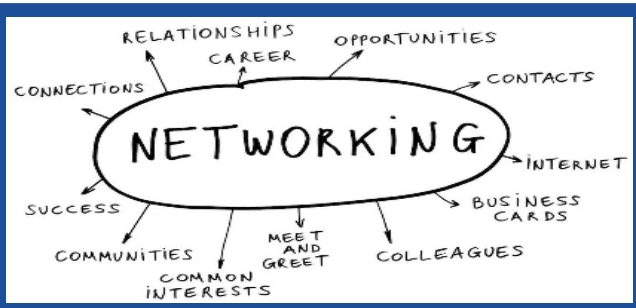

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2019 FALL SEMINAR REGISTRATION FORM

#1 - September Seminar Location

Meijer
2929 Walker Ave NW, Grand Rapids, MI 59544

		MEMBER	NON-MEMBER
Wed 09/18	TRANSPORTATION, LOGISTICS AND THE LAW Includes "Seminar Manual"	☐ $520	☐ $595
Thu 09/19	CONTRACTING FOR TRANSPORTATION & LOGISTICS SERVICES Includes "Seminar Manual"	☐ $520	☐ $595
Fri 09/20	FREIGHT CLAIMS IN PLAIN ENGLISH Includes "Freight Claims in Plain English 4th Ed" Soft Cover Books	☐ $550	☐ $625

#2 - October Seminar Location

Intelligent Logistics
1100 E Howard Lane, Suite 500, Austin, TX 78753

		MEMBER	NON-MEMBER
Mon 10/07	FREIGHT CLAIMS IN PLAIN ENGLISH Includes "Freight Claims in Plain English 4th Ed Soft Cover Books	☐ $550	☐ $625
Tue 10/08	CONTRACTING FOR TRANSPORTATION & LOGISTICS SERVICES Includes "Seminar Manual"	☐ $520	☐ $595
Wed 10/09	TRANSPORTATION, LOGISTICS AND THE LAW Includes "Seminar Manual"	☐ $520	☐ $595

#3 - October Seminar Location

Holiday Inn
909 Holcomb Bridge Rd., Roswell, GA 30076
Hosted by Nolan Transportation

		MEMBER	NON-MEMBER
Mon 10/28	FREIGHT CLAIMS IN PLAIN ENGLISH Includes "Freight Claims in Plain English 4th Ed Soft Cover Books	☐ $550	☐ $625
Tue 10/29	CONTRACTING FOR TRANSPORTATION & LOGISTICS SERVICES Includes "Seminar Manual"	☐ $520	☐ $595
Wed 10/30	TRANSPORTATION, LOGISTICS AND THE LAW Includes "Seminar Manual"	☐ $520	☐ $595

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Registration on the next page

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Membership in the Council is open to anyone having a role in transportation, distribution or logistics. Membership categories include:

- **Regular Member** (shippers, brokers, third party logistics and their representatives);
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All members receive:

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New Members also receive:

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If you are not presently interested in becoming a member, but would like to subscribe to the **TRANSDIGEST**, you can opt for a 1-Year/Non-member subscription to the newsletter by making the appropriate choice below.

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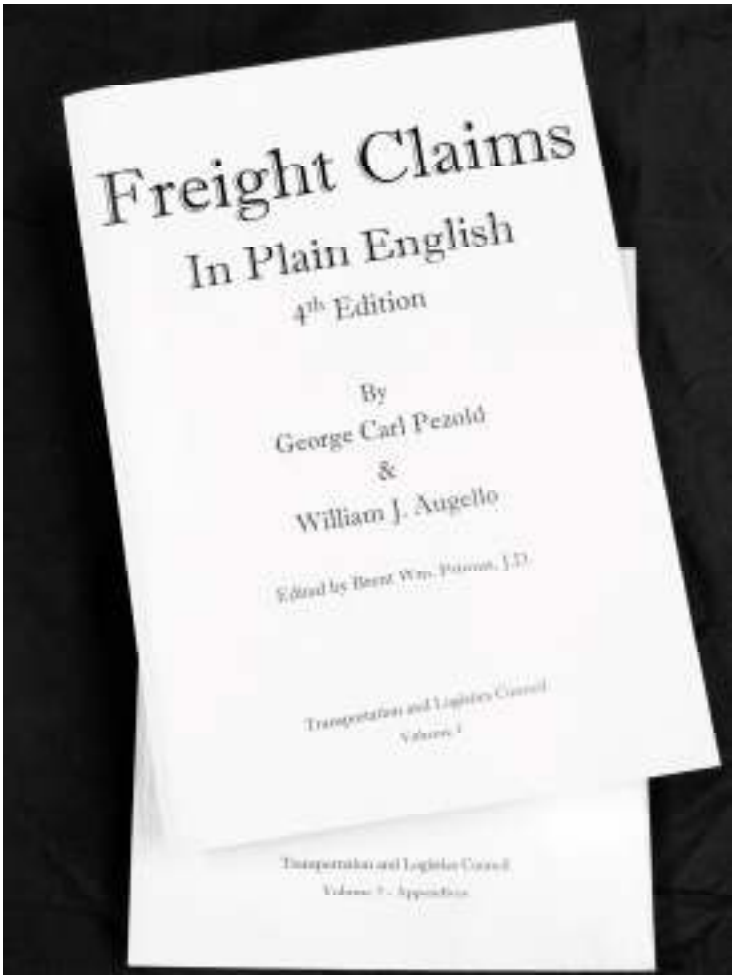

Freight Claims in Plain English (4th Ed.)

The hard-cover edition of Freight Claims in Plain English (4th Ed.) was out of stock, so the Council has arranged to have it reprinted in a soft-cover edition.

Often referred to as "the Bible" on freight claims, as the title suggests it remains the most readable and useful reference on this subject for students, claims professionals and transportation attorneys.

The new soft-cover edition comes in two volumes in a handy 7" x 10" format. Volume 1 consists of 592 pages including full text, a detailed table of contents, topical index and table of authorities. Volume 2 consists of 705 pages with 161 useful appendices – statutes, regulations, forms and other valuable reference materials.

Best of all, the soft-cover edition is reasonably priced – formerly $289 but now only $149 for T&LC members and $159 for non-members. Free shipping in the contiguous U.S. New York State residents sales tax applies.

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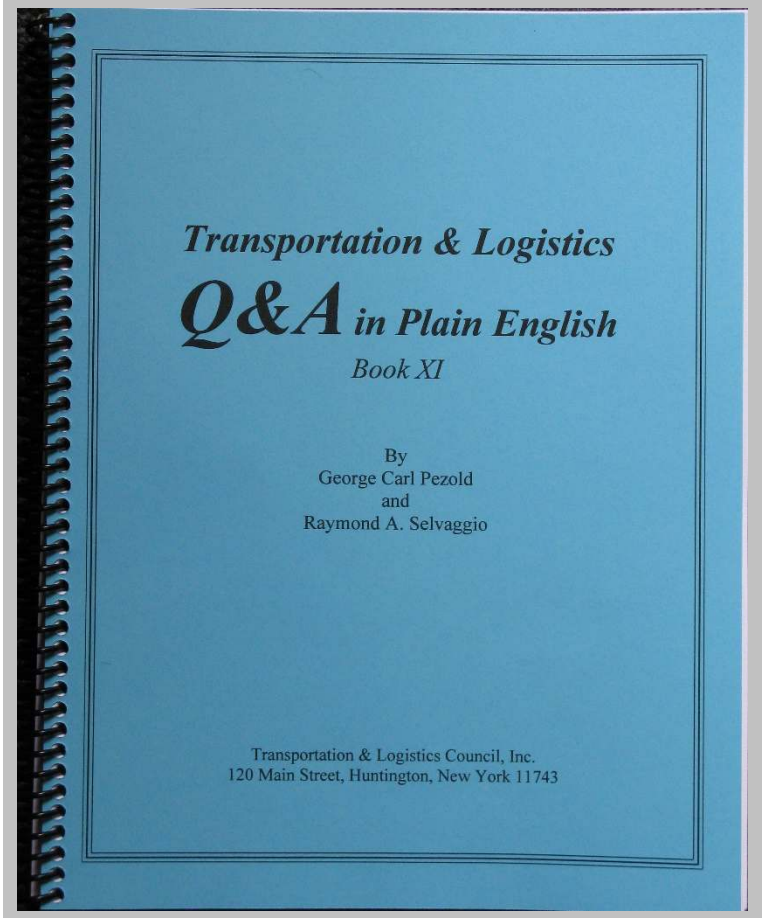

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